IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

LPA No. l26 of 2005
Dinesh Pratap Singh.. appellant
vs
Century Rayon and ors...Respondents

Mr.K.P Anilkumar for appellant
Mr P.K.Rele for respondents

**CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.**

**Dated 25.7.2005**

P.C:

. Heard advocates. Perused the order of the learned single Judge. Briefly the facts of the case are that there was altercation in the factory premises of the lst respondent between one of the workers, Jagat Singh and an outsider. Several workers rushed to Jagat Singh’s aid when they found him being assaulted. The workers agitated by the fact that an outsider was interfering with their trade union activities, stopped the car of the President of the company,pulled out the driver of the car and assaulted him. The Senior Vice President (Finance and Administration), Mr. Kedia, who on hearing of the assault on the President S.P Mandelia, went to his rescue. Mr. Kedia was also assaulted leading to him being hospitalised for almost a month. As a result of this 25 workers

including the petitioner were chargesheeted on 9.4.l977 for various misconducts under the Standing Orders.Out of the 25 workers who were chargesheeted the enquiry officer absolved l3 workers of the charges levelled against them. The remaining l2 workers were held guilty of the misconduct alleged against them. Almost all of them were held guilty of assault on the officers of the company. However, it appears that on account of negotiations between the recognised union and the respondent company, the company decided to dismiss only 3 workmen out of the l2, while retaining 9 workmen were retained in service. The said 3 workmen namely Jagat Sing,Eswaran and the petitioner were dismissed from the service of the respondent company. The respondent company agreed to a joint reference for adjudication of the demands raised on behalf of the three dismissed workmen before the labour court. Accordingly the reference was made for adjudication before the labour court . During the pendency of the reference Jagat Singh settled his dispute with the respondent company on a monetary basis. Eswaran died during the pendency of the reference and the respondent company settled all his dues with his legal heirs.

2. The labour court by its Part I award dated 29.3.l996 held that the domestic inquiry against the petitioner was fair and proper and by Part II award dated 2l.5.l997 the labour court found that the misconduct had been proved against the workman. However, the labour court was of the view that the punishment of dismissal was very harsh as the incident had arisen in an exceptional manner and directed grant of compensation in lieu of reinstatement and accordingly awarded 30 months wages to the workman on the basis of his last drawn wages alongwith his other legal dues.

. The workman preferred writ petition before this court which came to be disposed by the learned single Judge by the order under appeal. The main contention raised before the learned single Judge was that the misconduct against all the l2 workmen which was proved was almost identical and therefore there was no reason for the respondent company to discriminate against the petitioner. It was urged that there was no plausible reason why the respondent company has taken a lenient view in respect of 9 workmen whereas the 3 workmen who were dismissed have been treated with a different yardstick. The learned single Judge after

considering the relevant judgments of the Supreme Court as well as of this court rejected the contention raised on behalf of the workman by observing as follows:

> "A conspectus of these judgments reveals that it is only when workers who are identically charged and found guilty, are treated differently without any consensus or consents from the Union, or unilaterally by the employer, that the management could be considered to be guilty of the charge of discrimination. However, when there is a settlement or an agreement or an understanding which could be either in accordance with the provisions of the Industrial Disputes Act, or merely an oral understanding to restrain some employees who were charged while dismissing others who were similarly charged it cannot be said that the employer would be guilty of the charge of discrimination. It may be true that the trade union is often faced with a conundrum as to whether to agree to relief being granted to a large body of workmen on condition that some workmen would be

dismissed. A consideration of various factors, including that at least some workers would benefit by such understanding and be retained in service may compel a trade union to accept the terms and conditions put forth by the trade union in its wisdom and in the given situation to concede to certain objections raised by the employer for the greater good of the other employees. Under these circumstances, if the trade union agrees to certain conditions, however, distasteful they may be, for the greater good of the several thousands of workers in services, it could not be said that the action of the management in keeping out such workmen after considering the views of the union would amount to discrimination. In the present case, there is ample evidence on record including a letter which is placed before me dt l0.9.l980 written by the respondent company to indicate that it was after the respondent company had considered the views of the petitioner union that it decided to dismiss only three workmen. The union obviously would have wanted reinstatement of

> all the employees. However, on a consideration of the situation and after discussions, the management had taken a decision to dismiss only three workmen while issuing warning letters to the other 9 workmen who had been found guilty of the misconduct alleged against them. In these circumstances it cannot be said that the respondent company had acted discriminatory, capriciously or arbitrarily while retaining the 9 workmen in service and dismissing the three workmen".

. The learned single Judge further directed that the respondent company having settled the dispute with other two workmen by paying them some amounts could have settled the issue with the appellant also and the company was directed to pay similar amount which was paid to Jagat Singh.

. We do not see any ground to interfere with the well considered findings recorded by the learned single Judge. The labour court found that the appellant workman was guilty of having assaulted the officers of the company which led to the Vice President of the company being hospitalised for

over a month. He has been found guilty of other charges such as ritous behaviour on the premises of the establishment, forming unlawful assembly, shouting slogans in the premises, commission of acts subversive of discipline and causing wilful damage to the property of the establishment including the car used by the President of the company and the telephone instruments. In our opinion no case is made out for interference with the impugned order of the learned single Judge. Appeal is dismissed.